

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

INDECK KEYSTONE ENERGY LLC,	)	
	)	
Plaintiff/	)	
Counter-defendant,	)	
	)	Civil Action No. 04-325 Erie
v.	)	
	)	Judge Sean J. McLaughlin
VICTORY ENERGY OPERATIONS	)	
LLC,	)	
	)	
Defendant/	)	
Counter-plaintiff.	)	

**DEFENDANT'S PRETRIAL MOTION TO STRIKE AND DENY PLAINTIFF'S  
CLAIMS FOR UNJUST ENRICHMENT AND UNFAIR COMPETITION GIVEN THE  
EXISTENCE OF A CONTRACT THAT GOVERNED THE CONDUCT AT ISSUE**

Defendant Victory Energy Operations, LLC ("VEO"), pursuant to L.R. 16.1.4, moves for entry of a pre-trial order striking and denying Plaintiff Indeck Keystone Energy LLC's ("IKE") claims for unjust enrichment and unfair competition for conduct that arose prior to January 8, 2006, due to the existence of a contract that governed the conduct at issue, and in support thereof, states:

1. It is undisputed that from September 8, 2004 through January 8, 2006, IKE was the licensor under a License Agreement dated January 8, 2003 (the "Agreement"), and that VEO was the licensee under that Agreement.
2. The Agreement governed the rights and obligations of the parties relating to the design, manufacture, marketing and sales of boilers under the license.
3. Even though IKE invoiced VEO and accepted VEO's payment for each boiler that VEO sold pursuant to the Agreement, IKE alleges that VEO was unjustly enriched because some

of the boilers sold included features that it alleges were beyond the scope of the Agreement. (Plaintiff's complaint, Counts V and VI).

4. IKE cannot pursue its claims for unjust enrichment or unfair competition relating to acts that occurred during the license period, given the existence of the Agreement that governed the specific conduct of the parties. *Villoresi v. Femminella*, 856 A.2d 78,84 (Pa. Super. Ct. 2004) (finding the “where an express contract already exists to define the parameters of the parties’ respective duties, the parties may avail themselves and an equitable remedy for unjust enrichment cannot be deemed to exist.”); *see also Hershey Foods Corp. v. Ralph Chapek, Inc.*, 828 F.2d 989, 999 (3d Cir. 1987) (“Under Pennsylvania law, the quasi-contractual doctrine of unjust enrichment [is] in applicable when the relationship between the parties is founded on a written agreement or express contract.”); *Gee v. Eberle*, 420 A.2d 1050 (Pa. Super. Ct. 1980) (holding that “the doctrine of unjust enrichment is clearly ‘inapplicable when the relationship between the parties is founded on a written agreement or express contract.’”).

WHEREFORE, Defendant Victory Energy Operations, LLC requests that this Court enter a pre-trial order, pursuant to L.R. 16.1.4, striking and denying Plaintiff Indeck Keystone Energy LLC's ("IKE") claims for unjust enrichment and unfair competition for conduct that occurred prior to January 8, 2006.

Dated: April 20, 2007

Respectfully submitted,

/s Christopher T. Sheean  
One of the Attorneys for Defendant,  
VICTORY ENERGY OPERATIONS, LLC

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**CERTIFICATE OF SERVICE**

Christopher T. Sheean, an attorney, certifies that on the 20th day of April, 2007, he caused a copy of the foregoing ***Defendant's Pretrial Motion to Strike and Deny Plaintiff's Claims for Unjust Enrichment and Unfair Competition Given the Existence of a Contract that Governed the Conduct at Issue*** to be filed electronically, and that the CM/ECF system for the court will e-mail a copy of the foregoing to the following counsel of record:

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/s/ Christopher T. Sheean  
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